

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**  
WILMINGTON, DELAWARE 19801

*John K. Welch*  
Judge

March 8, 2011

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**Re:   *State v. Ryan P. Oakes***  
**Case No.: 0811008904**

**FINAL ORDER AND DECISION ON**  
**DEFENDANT'S MOTION TO SUPPRESS**

Dear Counsel:

This Court previously issued a Briefing Schedule and Order on or about December 1, 2010. Counsel was directed to file cross-memoranda as to the issue contained in *State v. Maxwell* 624 A.2d 926 (Del. Supr. 1993) as to what facts and circumstances, if any, were within arresting Officer Agner's knowledge on the date, time and place set forth in the charging documents that did or did not constitute reasonable trustworthy information to warrant Officer Agner "as a man of reasonable caution" in believing that an offense has been or was being committed by this defendant.

The Court requested counsel of record to file cross-memoranda, in essence, on defendant's Motion to Suppress and whether probable cause was, in fact, set forth in the record for the following charges; one Count Vehicular Assault, Second Degree, 11 *Del.C.* §628(e); Driving Under the Influence of Alcoholic Liquor or Drugs, 21 *Del.C.*

§4177(a); Failure to Have a Registration Card in his possession, 21 *Del.C.* §2108; Reckless Driving, 21 *Del.C.* §4175(a); Failure to Have Insurance Identification in his possession, 21 *Del.C.* §2118(p); Failure to Have a License in his possession, 21 *Del.C.* §2721(b); and finally Reckless Endangering, 11 *Del.C.* §603(a)(1). All offenses allegedly occurred on a public roadway know as Route 1, at Route 273 on the 13<sup>th</sup> day of November, 2008 in New Castle County according to the Charging documents.

With regards to defendant's Motion to Suppress filed with the Clerk on or about March 2, 2009, defendant stipulates in his filings that there was reasonable articulable suspicion to conclude the defendant had committed or was about to commit a criminal offense. However, pursuant to paragraphs 2 and 3 of defendant's Motion to Suppress, defendant asserts there was no probable cause to arrest the defendant for any of the pending criminal charges. Defendant therefore he moves to suppress all evidence in this matter.

### **I. The Facts**

Hearings on defendant's Motion were held before this Court on January 25, and August 9, 2010. The Court has already concluded in its written opinion on August 21, 2010 that the defendant was formally arrested pursuant to 10 *Del.C.* §1901 on the date, time and place listed in the charging documents.

The facts that exist in the instant record following briefs filed by counsel of record are that on or about November 13, 2008 at approximately 8:00 a.m. Trooper James Agner

("Agner") was on routine patrol on Route 1 in New Castle County. Agner received a report via RECOM that a "domestic" had occurred in the areas of Route 1 and Route 273. The motor vehicle was allegedly now headed northbound on Route 273. According to RECOM, the vehicle was described as "dark, possibly green, Chevy Silverado pick-up truck".

The reports from RECOM provided to Agner were that the domestic incident had occurred on the side of the road between a white male and female and indicated the vehicle was operated by a white male. According to the RECOM reports, the motor vehicle was moving on the shoulder of the roadway, where it allegedly struck a white female causing her to fall down the hill.

At that time, according to the RECOM reports, the white female had been walking along the public roadway and yelling into the passenger window of the pick-up when the motor vehicle moved forward, striking her and knocking her down the hill on the embankment.

Agner received four different updates from RECOM allegedly detailing these events.

During the suppression hearing Agner testified that he was aware the incident had been also reported by at least three (3) witnesses who provided factual information, including phone numbers and that dispatch notified him that one of the witnesses was now following the vehicle and providing "ongoing updates".

One of the RECOM witnesses indicated the license plate for the instant motor vehicle was “502158.” Agner was also notified that the witnesses believed the white male was driving under the influence.

At some point after receiving the RECOM reports, Agner located the motor vehicle, not far from the location where he received the RECOM calls.

Agner estimated he was able to locate the motor vehicle approximately three (3) minutes after he received the initial RECOM call.

For safety reasons Agner approached the vehicle from the passenger side because the vehicle had stopped on the merge lane. He now realized a white female was driving the truck and a white male, the defendant, was in the passenger seat. According to Agner, the defendant had a “strong odor of alcohol coming from his person”, “bloodshot eyes”, “difficulty standing” after exiting the vehicle, “a pale complexion” and, “slurred, mumbled speech”.

Based upon Agner’s RECOM calls and his traffic stop, Agner placed the defendant in handcuffs and placed him in the rear of his patrol vehicle.

Following the arrest of the defendant, Agner spoke to the female occupant who was now driving the motor vehicle in question. She informed him that she and the defendant had “been out partying the night before”. The female also indicated she had been in an altercation with the defendant and that the incident began because she was “upset he [defendant] was driving because he was drunk”. According to Agner, the female told Agner that she tried to get the defendant to let her drive, but he refused so she told him to pull over when the domestic incident occurred. Once the vehicle stopped,

according to the female driver, she exited the vehicle driven by the defendant and began to walk down the side of the road and the vehicle struck her from behind.

## **II. Legal Issue**

The pending issue, as addressed in the briefing schedule issued by this Court is whether there was probable cause for the arrest of the defendant for all, or any, of the instant charges listed above. Defense stipulated that there was reasonable articulable suspicion set forth in the suppression record for the motor vehicle stop.

Specifically the Court must decide whether on the date, time and place set forth in the Charging documents, Officer Agner, as a “man of reasonable caution” did or did not have reasonable trustworthy information to warrant him into believing the instant offenses had been committed or was being committed by this particular defendant.

## **III. The Law**

The State has set forth in its filings much of the case law detailing probable cause. Case law in the State of Delaware provides that probable cause to arrest is present when, at the time of the arrest the officer had knowledge that the suspect has committed or is committing a crime.<sup>1</sup>

Delaware Courts have also ruled over and over again that in determining probable cause it is viewed by the totality of circumstances as viewed by a reasonable officer in light of his/her training and experience.<sup>2</sup>

In evaluating the “totality of circumstances” that warrant or do not warrant a finding of probable cause, State Courts conduct a case-by-case review of the “factual and

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<sup>1</sup> See *Beck v. Ohio*, 379 U.S. 89 (1964).

<sup>2</sup> See *State v. Maxwell*, 624 A.2d 926, 929-930 (Del. 1993).

practical considerations of everyday life in which reasonable and prudent man, not legal technician to act.”<sup>3</sup>

As further case law provides in establishing probable cause, the State must present facts suggesting, under the totality of circumstances, that a fair probability existed that a defendant was committing a crime.<sup>4</sup>

According to the Delaware Supreme Court, “[t]he possibility there may be a hypothetically innocent explanation for each of several facts revealed during the courts investigation does not preclude a determination by the [Court] that probable cause exists for an arrest”.<sup>5</sup>

As State Courts have found, ... “[a] finding of probable cause does not require police to uncover sufficient information to prove a suspect’s guilt beyond a reasonable doubt or even to prove that guilt is more likely than not”. *Id.*

#### **IV. Burden of Proof**

“On a Motion to Suppress, the State bears the burden of establishing that the challenged search and seizure comported the rights guaranteed [the defendant] by the United States Constitution, the Delaware Constitution, or Delaware Statutory law. The burden of proof on a Motion to Suppress is proof by a preponderance of the evidence”<sup>6</sup>

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<sup>3</sup> See *Maxwell*, 624 A.2d at 928.

<sup>4</sup> See *State v. Miller*, 4 A.3d at 373-374 (citing *Jarvis v. State*, 600 A.2d 38, 42-43 (Del. 1991)).

<sup>5</sup> See *Maxwell*, 624 A.2d at 930

<sup>6</sup> See *Hunter v. State*, 878 A.2d 558, Del. Supr., No. 279-2000, Steele, J. (August 22, 2001)(Mem.Op. at 5-6; *State v. Bien-Aime*, Del. Supr., LEXIS 132, Cr.A. No.: IK92-08-326, Toliver, J. (March 17, 1993) (Mem.Op.)(*citations omitted*).

## V. Discussion

### a) **The State's Position:**

The State argues at page 4 of its Memorandum that even if Trooper Agner did not have probable cause to arrest the defendant at the time he placed the defendant in handcuffs he developed probable cause after speaking to the victim at the scene. The State offers as case law for its legal position that ... “It is a well settled point of law that illegally obtained evidence which is ‘fruit of the poison tree’ must be excluded”<sup>7</sup>

The State argues, however, there are exceptions to the rule and even official misconduct does not fatally taint evidence if it would have been discovered absent official misconduct.<sup>8</sup>

The State argues that the *Thomas* decision controls under the facts of this case. In *Thomas* defendant argued that drugs were found on him pursuant to a improper pat-down search because he had not been asked the required questions under 11 *Del.C.* §1902. However in *Thomas*, the Delaware Supreme Court, the State argues, held that regardless, the drugs on defendant would have been inevitably discovered just moments later when another officer provided that the officer who stopped him with information that actually created probable cause.<sup>9</sup>

The State argues the same principal applies here in the instant motor vehicle charges. The State asserts that even if the Court decides that the defendant was arrested absent a showing of probable cause, Trooper Agner obtained sufficient information for

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<sup>7</sup> See *Wong Sun v. U.S.*, 371 U.S. 471 (1963).

<sup>8</sup> See *Thomas*, 8 A.3d at 119, citing *Cook v. State*, 374 A.2d 264, 267-268 (Del. 1977); See also *Jones v. State*, 745 A.2d 856 (Del. 1999).

<sup>9</sup> *Id.*

probable cause from the victim just moments later. The victim's statements, according to the State provided that Trooper Agner obtained information not as a result of any official misconduct and therefore it was not fruit of the poisonous tree. Pursuant to the parties' stipulation, the defense has already agreed reasonable articulable suspicion exists to stop the vehicle on the date, time and place in the Information. The State asserts that Agner would have had the opportunity to speak with the female driver regardless of whether defendant had been handcuffed and placed in the back of the patrol vehicle. The State therefore argues the defendant's Motion to Suppress should be denied.

**b) The Defendant's Position:**

The defendant argues in its Answering Brief, that the recent Supreme Court decision in *Thomas v. State*<sup>10</sup> doesn't apply to the facts of this case because the Supreme Court noted that the officer in question in *Thomas* was relying on information from a past, proven reliable informant.<sup>11</sup>

The defendant argues that the facts in *Thomas* are quite different from the case at bar and that the information received by Officer Janvier in *Thomas* was very specific detailing the suspect's appearance and movements. The defendant argues that the radio call in *Thomas* from other officers with much more information than was ever relayed in the case at bar. According to defendant, all Agner knew at the time of the arrest was the description of the vehicle, the tag number and that a white male and female were involved in a domestic incident. The defendant argues the initial call from RECOM indicated a white male was driving the vehicle and that a name or physical description

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<sup>10</sup> 8 A.3d 995 (Del. 2010).

<sup>11</sup> See *Thomas v. State*, 8 A.3d 1196 (Del. 2010).



was not provided to Agner. The defense argues that Agner didn't know who was in the vehicle when he approached it and did not know if the occupants were involved in a domestic dispute and therefore this information is different drastically from *Thomas*.

Defense therefore argues the State is attempting to improvidently expand the *Thomas* decision and suggests that if the State is ever able to discover incriminating evidence, it is admissible with respect to an arrest of the defendant, even if the arrest occurred absent some probable cause. In essence, defendant argues to expand the *Thomas* ruling in this case would "eviscerate the Fourth Amendment of the U.S. Constitution and therefore, while the defendant conceded that reasonable articulable suspicion, the officer simply "jumped the gun" by placing handcuffs on the defendant when he had no basis to believe he committed an offense.

## **VI. Opinion and Order**

The facts, as set forth in the previous decision the finding the defendant was arrested when Agner came in contact with a motor vehicle that matched RECOM's description and tag number approximately one and a half miles down the road near Route 7 at AAA Boulevard. The Court concluded in its August 2010 Opinion that Agner activated his emergency lights and the vehicle pulled over without an incident. The Court also found Agner approached the vehicle on the passenger side and observed that a female with dark hair was now operating the vehicle. The white male later identified as the defendant was seated in the passenger seat. Agner testified at that time when he observed the defendant there was as "strong odor of alcohol" "emanating from inside the vehicle", as well as defendant's person and that defendant "had a pale complexion",

“blood shot eyes”, “disorderly conduct”, or having “trouble standing up.” The Court also concluded in its August 2010 Opinion that “Oakes had a bit of slurred speech” and was “mumbling” which made it hard for Agner to “clearly understand what the defendant was saying”. Agner then ordered Oakes out of the motor vehicle, handcuffed him and placed him in the rear of the cruiser.

Coupled with the Court’s Factual Findings regarding the RECOM reports previously in the Court’s August 21, 2010 Opinion, the Court finds there was probable cause to arrest the defendant for a violation 21 *Del. C.* §4177(a). During those RECOM calls Agner was informed that an incident involved a “dark colored truck” driven by a white male and that a white female with dark hair was seen being ejected from the passenger side of the truck and being struck by the vehicle causing her to fall down a ditch. During or before the traffic stop, Agner testified he received ongoing updates from RECOM about the present location of the vehicle which had left the original scene of the incident that a concerned member of the public who actually was following the suspect vehicle and providing ongoing reports to RECOM.

This Court must discern whether there was probability that defendant had committed an offense and a probability that the defendant was a person who was or had committed an offense under *Maxwell*.<sup>12</sup> Applying the case law set forth above, even not considering the confirming information received from the female passenger after the truck had stopped, the Court concludes there was probable cause to arrest the defendant for a violation of 21 *Del.C.* §4177, as well as one Count Vehicular Assault, Second

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<sup>12</sup> See *Maxwell*, 624 A.2d at 930-31.

Degree, 11*Del.C.* §628(e). The Court therefore denies the defendant's Motion to Suppress.

Assuming arguendo, this Court applies the Supreme Court's decision in *Thomas*, in lieu of the fact that defendant has already stipulated reasonable articulable suspicion for the traffic stop, the Court also finds admissible on the issue of probable cause the female passenger's statements that the defendant was actually driving the vehicle at the time in question and her statements that they had been drinking all night and was apparently intoxicated. The Court finds the decision in *Thomas* is directly analogous to the facts at bar. While not past proven reliable informants, here were actual fact witnesses to the event who were following the defendant who were detailing the defendant's specific, ongoing movements. Officer Agner had the tag number. This information in this case, as in *Thomas* was received inevitably from the female passenger just moments later after defendant's arrest pursuant to 10 *Del.C.* §1901 when Agner interviewed the female driver. No police misconduct was cited in the record and the facts from the female passenger was inevitably received by Agnew almost contemporaneously during his normal investigation just moments after defendant was handcuffed and placed in his patrol car.

Trial shall be scheduled by the Criminal Court at the earliest convenience of the Court and counsel of record.

**IT IS SO ORDERED** this 8<sup>th</sup> day of March, 2011.

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John K. Welch, Judge

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cc: Diane Healey, Case Manager, CCP Criminal Division